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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,618

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EXAMINER

HALL, DEANNA K

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

05/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/798,618	Applicant(s) WULFMAN ET AL.	
	Examiner DEANNA K. HALL	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9, 10, 28, 30, 31 and 39-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-10, 28, 30-31, 39-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>April 2, 2009</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgments

1. This office action is in response to the reply filed on April 2, 2009.
2. In the reply, the applicant elected invention III to which claims 39-41 were drawn without prejudice.
3. Applicant amended claims 9, 10, 28, 30, 31, 39-42; canceled claims 1-8, 11-27, 29, 32-38; added new claims 43-54. Claims 9-10, 28, 30-31, 39-54 are pending and will be examined in this action.

Information Disclosure Statement

4. The information disclosure statement (IDS) submitted on April 2, 2009 is in compliance with the provisions of 37 CFR 1.97(b). Accordingly, the IDS is being considered by the Examiner.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 9, 28, 30-31, 39-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Schechter et al. (US 5,685,840) (“Schechter”). Schechter discloses a catheter assembly comprising:

A console unit 51 for interfacing with an interventional catheter assembly 12 having an operating head 15 for removal of material from a material removal site at a body lumen or cavity, the console unit having the capability to implement control features for operating the catheter assembly based on an operator's input of parameters C3 L18-21 and comprising an interface accepting an operator's input of parameters and means for calculating and implementing automated operating conditions of the catheter assembly based on the parameters input by the operator C3 L21-30, the console unit additionally having a display 73 capable of displaying information concerning operating conditions and feedback from the material removal site C6 L10-12, C7 L40-55.

The interface accepts operator's input of at least operating head rotation rate C7 L21-31.

The automated operating conditions calculated and implemented include at least infusion profile C3 L46-53.

Means for calculating and implementing automated operating conditions comprise a plurality of preset stored routines C8 L67- C9 L10, a software program C7 L33-37, or hardware C7 L1-22.

The display 73 is capable of displaying at least three operating parameters such as actual operating head rotation rate, desired operating head rotation rate 71, infusion

rate 70, operating head status indicator 72, elapsed time of operation, volume of aspirate withdrawn, fluid flow, C7 L40-55, C6 L10-12.

The console unit comprises an aspiration pump 28 which is capable of providing constant high levels of aspiration at rates of at least 15ml/l C5 L14-40.

The console unit further comprises a control switch 60 for activating and shutting down aspiration and infusion.

The console unit further comprises a control feature 62 for selecting a level of a level of aspiration and a control feature 70 for selecting a level of infusion.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schechter in view of Ross et al. (US 6,258,111) ("Ross").

Schechter discloses the invention as substantially claimed (see above).

However, Schechter does not directly disclose a plurality of vacuum pumps connected in series. Ross, in the analogous art, teaches a motor providing vacuum for aspiration to the catheter assembly C2 L28-43. The motor is controlled by a controller that is coupled to a foot pedal, see abstract. (claim 9-10, 25-26) The aspiration system comprising a plurality of vacuum pumps or a multi-lobed vacuum pump, Fig. 13.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Schechter with the ports and the aspiration system as taught by Ross for removing debris from a vessel lumen. (claim 17).

Response to Arguments

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEANNA K. HALL whose telephone number is (571)272-2819. The examiner can normally be reached on M-F 9:00am-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Deanna K. Hall/
Examiner, Art Unit 3767
4/30/09
/Kevin C. Sirmons/
Supervisory Patent Examiner, Art Unit 3767